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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES: THE RIGHT TO A FAIR TRIAL

National practices related to the right to a fair trial: Report of the Secretary-General

Addendum

Austria

[Original: English]
[6 August 1993]

1. In paragraphs 14 and 24 the report (E/CN.4/Sub.2/1993/24/Add.2) refers to a non-governmental organization's 1991 report about "police ill-treatment and in some cases torture of detainees" in Austria. The NGO report referred to obviously is Amnesty International's report of 5 December 1991.

2. The Austrian authorities have subjected all alleged cases of ill-treatment of detainees to judicial investigation. Following such investigation the large majority of those cases remained unsubstantiated and many of them were clearly refuted. In particular, there was not one credible case of torture.

3. The case on which Amnesty International's allegations of torture were mainly based and which figured very prominently in its reports on Austria, that of Walter Jedinger (Appendix I, p. I of the December 1991 report), was also examined by the European Commission of Human Rights, which ruled that his application was "manifestly ill-founded". The other case brought to the attention of the European Commission, that of Anita Ribitsch, was also ruled inadmissible.

4. In Amnesty International's 1991 report, the case of an 18-year-old (D.D.) who allegedly had been tortured by police officers is described in detail. However, D.D.'s allegations were so contradictory that an independent court came to the conclusion that D.D.'s injuries probably had been self-inflicted. The court's ruling was backed up by the testimony of three witnesses, among them an interpreter, and medical expertise. Although Amnesty International was furnished with these facts in October 1991 it did not mention them in its December 1991 report.

5. Amnesty International's allegations of "widespread" police ill-treatment and even torture are therefore not backed up by facts. It would have been desirable for the Special Rapporteurs to examine the veracity of the reports to be quoted before repeating serious, but unsubstantiated charges of torture.

6. In particular, the right to fair trial in Austria has not been affected, since article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that confessions obtained as a result of torture must not be invoked as evidence, is directly applicable in Austrian courts. On the contrary, some allegations of ill-treatment such as those of D.D. seem to have been prompted by the possibility of using that article for the purpose of invalidating previous confessions.

7. As far as the defamation charges against allegedly ill-treated persons mentioned in the report (para. 24) are concerned, they really are quite rare, as Amnesty International was informed already in 1990. Even then, in most cases the proceedings are stayed because criminal liability only exists if the suspect knows that his accusation is false. Only in exceptional cases is the public procurator able to prove this.

8. Therefore, these sporadic defamation charges are hardly a deterrent to ill-treated persons lodging their complaints with the courts. The right to a fair trial is not affected by this limit to allegations of ill-treatment. It would not be appropriate to exempt police officers from the protection of this provision, since any person must have the right to defend himself against allegations of criminal activity.

9. Amnesty International itself has recently declared that the allegations of ill-treatment by the Austrian police have substantially declined in number over the past three years. The Special Rapporteurs' quotations are therefore somewhat outdated.